

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

-----X
METRO FUEL LLC, a Delaware limited
liability company,

No. C07-6067 JSW

Plaintiff,

vs.

CITY OF SAN FRANCISCO, a municipal corporation,
COUNTY OF SAN FRANCISCO, a subdivision of the
State of California, CITY AND COUNTY OF SAN
FRANCISCO, a chartered California city and county.

Defendants.
-----X

DECLARATION OF CABLE CAR CLEANERS

STEPHANIE FONSECA declares under penalty of perjury, pursuant to 28 U.S.C.

§ 1746, that the following is true and correct:

1. I submit this declaration in support of the motion by Plaintiff Metro Fuel LLC for a preliminary injunction in this case.
2. I am a tenant of the **JANICE PIVNICK TRUST**, the property owner of 1398 California Street in San Francisco. In accordance with my Lease Agreement with The Janice Pivnick Trust, I own and operate Cable Car Cleaners which is located at 1398 California Street in San Francisco. Pursuant to my authorization under my lease, I entered into a lease agreement with Metro Fuel and they subsequently placed and operated three panel signs on this property.
3. On or about December 12, 2007, the City of San Francisco issued a violation to **JANICE PIVNICK TRUST** alleging that Metro Fuel's panel signs are illegal and

purportedly imposing a fine of \$100 per day per sign for two signs. On or about February 27, 2008, the JANICE PIVNICK TRUST received a second Notice of Violation alleging that Metro Fuel's panel signs are illegal and that there were now three signs purportedly imposing a fine of \$100.00 per day per sign.

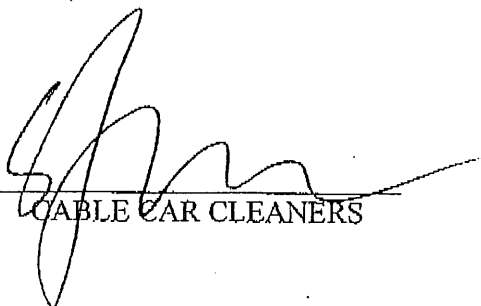
4. I notified Metro Fuel of these notices of violation and was informed that Metro Fuel had filed this lawsuit in federal court challenging the constitutionality of the advertising sign restrictions at issue. I informed Metro Fuel that I am very concerned about the notice of violation and the steep fines that the City claims are accruing. Metro Fuel explained that there would be a court appearance in the federal court action on July 11, 2008, and that Metro Fuel would be asking the Court to issue an injunction barring the City from acting on the notice of violation during the pendency of the lawsuit.

5. I informed Metro Fuel that if the issue was not resolved, I would have no choice but to remove the panel signs from the property as the JANICE PIVNICK TRUST was extremely upset that there were violations against their property and I was at risk of being evicted by the property owner. I attempted to resolve the situation with the City and they stated that unless a permit was issued the violations would continue to accrue. As a result I was forced to hire someone to come and remove the panels. I simply could not afford to be evicted from the property as Cable Car Cleaners is my source of income to support my family. It cost approximately \$595.00 to have the signs removed and disposed of. In March of 2008, I went to the planning department to discuss the permit process and as I understood it the City would not accept permit applications for panel signs. The fines had accrued to approximately \$12,000 by that time and were compounding on a daily basis. As a result, I had no choice but to pay the fine. I had spoken to several people from Metro Fuel and I understood that there is strong legal

precedent supporting Metro Fuel's constitutional claim, but I could not risk the possibility that the City's notice of violation penalties would keep accruing and further ruin my relationship with my Landlord. I was able to successfully negotiate the fines to a final payment of \$8,000 which I paid in full to the City of San Francisco Planning Department on April 2, 2008. This was a significant financial burden for me and for my family as we not only lost the income generated by the signs but I had to come out of my pocket to pay the fines. I am seeking full reimbursement from Metro Fuel for both the violation payment and for the removal of the signs. I am also confused as to why I was forced to remove my panel signs but across the street and the surrounding blocks there are multiple panel signs on bus shelters and newspaper stands. I would like to rectify this with the city so that I can have the panels put back up to recoup my losses and generate some extra income for my family.

Copies of all of the above referenced documents are attached as exhibit A

Dated: July 15, 2008
San Francisco, California



CABLE CAR CLEANERS

Exhibit A

2581

STEFON INC.
DBA SONIA'S DRY CLEANERS
2282 MARKET ST. (415) 503-1588
SAN FRANCISCO, CA 94114

DATE 4/2/08

11-25/1210
648

PAY TO THE ORDER OF Planning Dept. \$ 8000.

Eight Thousand Even DOLLARS

Bank of America

Serramonte Plaza
281 Serramonte Ctr
Daly City CA
650.815.4700

FOR Fine without permit - 1390 California St.

MP

⑈00258⑈ ⑆21000358⑆ 06489⑈05040⑈

SAN FRANCISCO
PLANNING DEPARTMENT
1650 Mission St, Suite 400
San Francisco, CA 94103

RECEIPT

DATE 4-2-08 No. 115183

RECEIVED FROM Syn P \$ 8,000

1390 California DOLLARS

☐ FOR RENT Syn penalty KTB 90, KTB 91

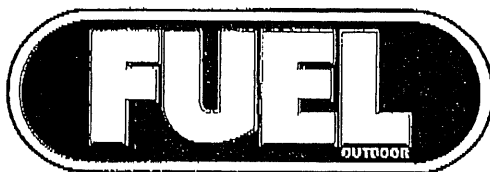
☐ FOR NOV 9338

ACCOUNT # 2581 FROM 7M TO

PAYMENT ☒ CASH ☐ CHECK

BAL. DUE ☐ MONEY ORDER BY 7M

1182



December 17, 2007

Cable Car Cleaners
1398 California Street
San Francisco, CA 94109
Attn: Stefanie

Re: San Francisco Planning Department Notice of Sign Violation

Dear Stefanie:

It has come to our attention that San Francisco Planning Department ("SFPD") representatives who have delivered notices of violations (the "Violation") directly to property owners who have leased space on their building or property to registered outdoor advertising companies have been urging property owners at the time of service of such notices to remove signs (the "Sign(s)") located on their property immediately.

In response to the Violations, Metro Fuel LLC has engaged and has been working with Quickdraw Permit Consulting to address all violations and seek their expeditious resolution. Metro Fuel LLC also wishes to assure you that, pursuant to our agreement with you, Metro Fuel LLC will indemnify and hold you harmless from any and all losses, claims, liabilities, fines, penalties or judgments, arising out of any claim or cause of action proximately caused by Metro Fuel LLC's posting of the Sign (except for any claims related to advertiser liabilities), including, without limitation, civil and criminal fines or impositions for violations of building codes and/or zoning regulations, including but not limited to the instant Violations, incurred with respect to the Sign.

Accordingly, we urge you to advise the SFPD representatives that the Sign(s) which are the subject of the Violations are on property leased to Metro Fuel LLC, and to refer all further inquiries, notices or directives directly to Metro Fuel LLC so that its legal counsel and permit consultants may take appropriate and responsive action.

Your relationship with us is important and we are confident that the Violations can and will be resolved in a manner that will continue to be beneficial to both of us going forward. Please do not hesitate to contact me to discuss the current status of our efforts to resolve these issues or any other matter.

Regards,

A handwritten signature in black ink that reads "James Taggart".
James Taggart
Vice President - Operations



SAN FRANCISCO
PLANNING DEPARTMENT
1650 Mission St. Suite 400
San Francisco, CA 94103

RECEIPT

DATE 7-2-08 No. 015183

RECEIVED FROM Syn P \$ 8,000

1390 California DOLLARS

☐ FOR RENT Syn Rental KAB 90, KAB 91

☐ FOR NOV 9338

ACCOUNT #2581 FROM 7M TO

PAYMENT ☒ CHECK

BAL. DUE ☐ MONEY ORDER BY 7M

1182

7007 2560 0001 0618 5192

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided.)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.41	0130
Certified Fee	\$2.65	09
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.06	

Sent To Fuel Outdoor Inc

Street, Apt. No., or PO Box No. 149 Fifth Ave 11th Floor

City, State, ZIP+4 New York, NY 10010

PS Form 3800, August 2006

7007 2560 0001 0618 5208

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided.)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.41	0160
Certified Fee	\$2.65	09
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.06	

Sent To Fuel Outdoor Inc

Street, Apt. No., or PO Box No. 8860 Melrose Ave 4th Floor

City, State, ZIP+4 Los Angeles, CA 90046

PS Form 3800, August 2006

MILLBRAE POST OFFICE
MILLBRAE, California
940309998
0567830160 -0095
04/07/2008 (000)000-0000 10:17:12 AM

Product Description	Sale Unit	Qty	Price	Final Price
NEW YORK NY 10010 Zone-8 First-Class Letter				\$0.41
0.70 oz. Certified Label #:				\$2.65
Issue PVI:				\$3.06
LOS ANGELES CA 90046 Zone-4 First-Class Letter				\$0.41
0.70 oz. Certified Label #:				\$2.65
Issue PVI:				\$3.06
Forever Stamp	1	\$8.20		\$8.20
Booklet	10	\$0.02		\$0.20
2c Havaajo Jeweltry PSA				\$14.52
Total:				\$20.00
aid by:				-\$5.48
change Due:				

Order stamps at USPS.com/shop or call 1-800-Stamp24. Go to USPS.com/clicknship to print shipping labels with postage, or other information call 1-800-ASK-USPS.

11#: 1000503651035
erk: 09

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

HELP US SERVE YOU BETTER

CONSUMER COMPLAINT

SAN FRANCISCO DISTRICT ATTORNEY

732 Brannan Street, San Francisco, California 94103 (415) 551-9595

Date Received: _____

Assigned To: _____

(DO NOT WRITE IN ABOVE SPACE)

Your Name: Stephanie Fonseca Complaint Against: Fuel Outdoor Inc
 Address: 1300 Marchison Dr. Address: 866 Melrose 149 fifth Ave
 City/Zip: Millbrae CA 94030 City/Zip: 11th floor, New York, NY, 10016
 Home Phone: (650) 292-4649 Phone: (212) 967-7333 ~~Ext~~ 646-722-942
 Work: () Cell: (650) 438-3523 Owner/Operator: James Taggart

Did you complain to Business: ☐ yes ☐ no If yes, what date? _____Name and Title of person you spoke to: James Taggart and Liza

Date and Location of contract/transaction sale: _____

How much money did you pay? \$ 8000 ☐ cash ☒ ^{Business} personal check ☐ credit card

Name of Attorney / Other agencies you have contacted: _____

Have you filed in Small Claims Court: ☐ yes ☒ no If yes, have parties been served? ☐ yes ☐ no Court date? _____Do you want a copy of this complaint to be sent to the Person or Company complained about? ☐ yes ☐ noPlease attach **COPIES** of cancelled checks/documents/contracts.

Describe the events in the order they happened. Include what you think would be satisfactory resolution of your complaint.

NOTICE:

The information contained in this form is true, correct and complete to the best of my knowledge, information, and belief.

City / State executed in San Francisco, CADate: 4.25.08Signature: [Signature]

April 25, 2008

To Whom It May Concern:

I, Stephanie Fonseca, own Cable Car Cleaners, a Dry Clean business at 1398 California Street. For approximately 4 years I have had a contract with a company by the name of Fuel Outdoor, an advertising company. The contract allows Fuel Outdoor to place advertising signs on the exterior wall of the building at 1398 California Street for a monthly fee. In March, we began receiving fine notices from the City of San Francisco because Fuel Outdoor did not obtain proper permits for these advertising signs. We brought this to the attention of Fuel Outdoor and they repeatedly stated that they would "take care of it". The daily fines kept mounting and reached \$200.00. We have since taken down the advertising signs and paid the fine of \$8000.00 so that we (Cable Car Cleaners) would remain in good stead with the City of San Francisco and my landlord. Since then we have repeatedly tried to contact Fuel Outdoor to get them to reimburse us in the amount of \$8000.00. They are now either not returning our calls, or they say that they will pay us when they settle a lawsuit with the City of SF. At this point, we highly doubt that they have any intentions to repay us.

I am also enclosing a letter from Fuel Outdoor, where they state that they take responsibility for paying this fine. A satisfactory resolution of this matter, from our perspective, would require Fuel Outdoor to repay us the \$8000.00 in fines.

Thanks and Regards,



Stephanie Fonseca

Cable Car Cleaners

1398 California Street, S. F. 94109

650-438-3523

April 7, 2008

Fuel Outdoor Inc.
149 Fifth Avenue
11th Floor
New York, New York, 10010

Fuel Outdoor Inc.
8060 Melrose Avenue
4th Floor
Los Angeles, Ca. 90046

Re: 1398 California Street, San Francisco CA

Dear Sir or Madame,


Over the last two weeks I have attempted, without success, to speak with someone at both of the above-mentioned offices regarding the reimbursement of an \$8,000 penalty from The City of San Francisco. The purpose of my calls was to inform you that we received a fine in the amount of \$8,000 from The City of San Francisco, and as per the enclosed letter, request reimbursement in the amount of \$8000.

It now seems that your firm has purposefully ignored my calls. This leads me to believe that you have no intention of paying this penalty. As a result, we will be filing a complaint with both The San Francisco District Attorneys Office (who we believe are anxious to pursue this matter), as well as the Attorney General's Office of the State of California under the Interstate Commerce Act.

We are giving you ten days from the date of this letter to send us a check in the amount of \$8,000, or we will continue to pursue the above-mentioned options. Please be clear that we believe the enclosed letter from your company is crystal clear that the fine **MUST BE PAID BY YOUR COMPANY**. Please let us know if you disagree. Please be aware that the property manager for our building spoke directly to Mr., James Taggart in your New York office, who told our property manager that your firm would be responsible for any penalties given by governmental agencies.

We await your check.

Sincerely,



Stephanie Fonseca
Cable Car Cleaners

02/28/2008 17:12 4154016676

FUEL OUTDOOR SF

PAGE 01/05



PLANNING DEPARTMENT

Notice of Violation General Advertising Sign

February 27, 2008

9524

1390 California Street

KAB115 (for wall sign)

POLK (Polk Neighborhood Commercial) District

0248/0001

Parcel Lot:

Staff Contact:

Jonathan Davis - (415) 558-6354

jdavis@curvia@sfgov.org

Property Owner:

Janice Pivnick Trust

101 Lombard St., Apt. 203E

San Francisco, CA 94111

Sign Company:

Unknown

1650 Mission
Suite 400
San Francisco
CA 94103-24

Reception:
415.558.63

Fax:
415.558.64

Planning
Information:
415.856.6

The Planning Department has recently inspected the above-referenced property and has determined that an additional violation of the Planning Code exists on the site with respect to the general advertising sign referenced above. The exact nature of the violation is detailed below:

DESCRIPTION OF VIOLATION

There is no record of a building permit being issued for the above-referenced general advertising sign. This is a violation of Planning Code Section 604. You must address this notice by providing evidence of an approved permit to install the signs or by applying for a building permit to remove the sign.

A prior Notice of Violation was issued on December 12, 2007 for two other signs (ID KAB90 and KAB91) on this site. Our records now show three unlawful general advertising signs exist on the site.

Timeline to respond.

Under Section 610 of the Planning Code, the responsible party has forty-five (45) days from the date post-marked on this notice or date of hand-delivery to file an application for a permit to remove the sign or request reconsideration of this Notice of Violation before an Administrative Law Judge.

Penalties

Failure to act on this Notice of Violation within 45 days from the date of this letter will result in a referral to the City Attorney for further action, including penalties, which will accrue beginning on the 46th day at a rate that is based on the size of the sign. For the subject sign, at 24 square feet each, the penalty is \$100 per day. Furthermore, Section 176(c)1 of the Planning Code provides for civil penalties in addition to the penalties provided in Section 610, of not less than \$200 for each day a violation is committed or allowed.

02/28/2008 17:12

4154016676

FUEL OUTDOOR SF

PAGE 02/05

Notice of Violation

Case: 9330
1390 California Street

to continue. If the above violation involves Section 934.1 of the Planning Code, an additional \$1,000 a day may be imposed by the Planning Director.

Building permit to remove or correct violation.

have thirty (30) days from the filing of the building permit to either (1) obtain a Final Inspection Approval or Certificate of Completion from the Department of Building Inspection (DBI); or remove all copy from the signs until such approval from DBI is obtained. If the required approvals have not been obtained within this time period, penalties will accrue at the above referenced amount of \$100 per day.

To avoid penalties, we strongly suggest that you send a photo (preferably via email) to the staff person shown at the top of this notice to confirm when the violation has been abated.

REQUEST FOR RECONSIDERATION HEARING

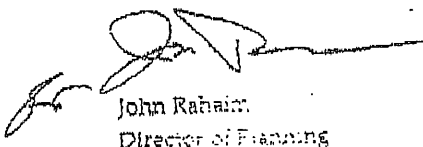
Written request for hearing and fees.

If you seek reconsideration of this Notice of Violation, you must complete a Request for Reconsideration application, which is available online at www.sfpplanning.org. The request must include evidence that demonstrates why this Notice of Violation was issued in error or why the administrative penalties assessed were in error. You must enclose a check for \$3,400 payable to the Planning Department for the initial hearing fee.

Other applications under Planning Department consideration.

We want to assist you in ensuring the property is in full compliance with the Planning Code and that no violations are pending. The Planning Department requires that pending violations be resolved prior to the processing and approving of any new building permits or other applications. Therefore any applications under consideration by the Planning Department for the subject site will be placed on hold until further notice.

Sincerely,



John Rahaim
Director of Planning

12/14/2007 19:10

4154016676

FUEL OUTDOOR SF

PAGE 01/03



SAN FRANCISCO PLANNING DEPARTMENT

Notice of Violation General Advertising Sign

Date: December 12, 2007
Case No.: 9330
Site Address: 1390 California Street
Sign ID: KAB90 (6x4 west-facing wall sign)
Sign ID: KAB91 (6x4 west-facing wall sign)
Zoning: POLK (Polk Street Neighborhood Commercial) District
Block/Lot: 0248/014

Staff Contact: Jonathan Purvis - (415) 558-6354
 jonathan.purvis@sfgov.org

1650 Mission St.
 Suite 400
 San Francisco,
 CA 94103-2479

Reception:
 415.558.6378

Fax:
 415.558.6409

**Planning
 Information:**
 415.558.6377

Property Owner:
 Larice Flynn Trust
 701 Lombard St., Apt. 203E
 San Francisco, CA 94111

Sign Company:
 Unknown

The Planning Department has inspected the above-referenced property and has determined that one or more violations of the General Advertising Sign Code exist on the site with respect to the general advertising signs referenced above. The description of the violation is detailed below.

DESCRIPTION OF VIOLATION

There is no record of a permit being issued for the above-referenced general advertising signs. This is a violation of Section 604.1 of the General Advertising Sign Code. You must act on this notice by providing evidence of an approved permit or by applying for a permit to remove the signs.

Under Section 604.1 of the General Advertising Sign Code, the responsible party has forty-five (45) days from the date posted on this notice to file an application for a permit to remove the signs or request reconsideration of this notice of violation before an Administrative Law Judge.

Penalties

Failure to act on this Notice of Violation within 45 days from the date posted on this notice may result in the case being referred to the City Attorney for further action, including penalties. The penalty is assessed at a rate that is based on the number of signs involved. The penalty is \$100 per day, per sign, for each day the violation continues. The penalty is not less than \$200 for each sign involved. If the above violation involves Section 604.1 of the General Advertising Sign Code, the penalty may be imposed by the Planning Director.

12/14/2007 19:18 4154016676

FUEL OUTDOOR SF

PAGE 02/03

Notice of Violation

12/2007

Case 07-390

1390 California Street

Building permit to remove or correct violation.

You are required to file a building permit to remove the sign. You have thirty (30) days from the date of the building permit to either (1) obtain a Final Inspection Approval or Certificate of Completion from the Department of Building Inspection (DBI); or remove all copy from the signs until such approval from DBI is obtained. If the required approvals have not been obtained within this time period, penalties will accrue at the above referenced amount of \$200 per day.

REQUEST FOR RECONSIDERATION HEARING**Written request for hearing and fees.**

If you seek reconsideration of this Notice of Violation, you must complete a Request for Reconsideration application, which is available online at www.sfplanning.org. The request must include evidence that demonstrates why this Notice of Violation was issued in error or why the assessed penalties assessed were in error. You must enclose a check for \$3,400 payable to the Planning Department for the initial hearing fee.

Other applications under Planning Department consideration.

We want to assist you in ensuring the property is in full compliance with the Planning Code and that no violations are pending. The Planning Department requires that pending violations be resolved prior to processing and approving of any new building permits or other applications. All new applications under consideration by the Planning Department for the subject site must be resolved prior to further notice.

Sincerely,

Dean Macris

Dean L. Macris
Director of Planning